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RCRA Compliance Section

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STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

Northwest Regional Office, 3190 - 160th Ave S.E. • Bellevue, Washington 98008-5452 • (425) 649-7000

June 17, 1998

CERTIFIED MAIL

P 125 952 672

Mr. Charles Benke, Jr.
Burlington Environmental, Inc.
(a wholly owned subsidiary of Philip Services Corp.)
1100 Oaksdale Ave. SW
Renton, Washington 98055

CERTIFIED MAIL

P 125 952 673

Mr. Mic Dinsmore
Port of Seattle
P.O. Box 1209
Seattle, Washington 98111

Dear Messrs. Benke and Dinsmore:

Re: Service of Notice of Decision on Permit Modification to the Dangerous Waste and Storage
Facility Permit for Terminal 91; Permit No. WAD000812917

This correspondence is the "service of notice of decision" as specified by the Washington State Dangerous Waste Regulations WAC 173-303-840(8). The permit modification to incorporate the agreed order (No. DE 98HW-N108) into the permit will become effective thirty days after this service of the notice of the decision.

The revised final permit modification is enclosed. The draft permit modification has been amended with the following two changes:

1. Changed wording for clarity: Permit condition VI.B.2.. The sentence; "The remaining upland acreage will be investigated and remedied under the state's Independent Remedial Action Program (IRAP) as provided for in WAC 173-340-510, unless this independent action fails to provide the necessary protection of human health and the environment.", is changed to "The remaining upland acreage will be investigated and *remediated* under the state's *independent remedial action process* as provided for in WAC173-340-510. *If this independent remedial action fails to provide the necessary protection of human health and the environment, the Department reserves the right to issue a state corrective action order that would cover the remainder of the upland area at Terminal 91.*"
2. Deleted: Permit condition VI.B.3.. The Department of Ecology (Ecology) will determine on a case-by-case basis, whether amendments or changes to any plans, reports or schedules justify use of the permit modification procedures under WAC 173-303-830.

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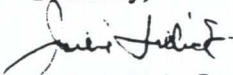
Mr. Charles Benke, Jr.
Burlington Environmental
&
Mr. Mic Dinsmore
Port of Seattle
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Ecology would also like to clarify some of the issues brought up during the comment period:

- Philip Service Corp. (Philip) and the Port of Seattle (POS) disagree with Ecology on the need for maintaining an operational permit at the Terminal 91 facility. Federal and state laws bind Ecology to require the continuance of the facility permit. The permittees have the option to request a Permit Modification to the operational portions of the permit under WAC 173-303-830(4). This modification could remove portions of the permit that are no longer necessary.
- The Environmental Protection Agency (EPA) has informed Ecology that it intends to rescind the May 1990 RCRA Section 3008(h) Order.
- The RCRA corrective action at the facility will proceed under the state's Dangerous Waste regulations. Ecology uses the standards, procedures, and other requirements of the Model Toxics Control Act (MTCA), Chapter 70.105D and its implementing regulations of 173-340 WAC, to satisfy corrective action requirements under WAC 173-303-646. It is expected that under MTCA, the required remedial action for the facility will be completed.
- The *current* RCRA regulations would require a Post-Closure Permit if corrective action is unable to remediate the site to meet RCRA clean closure standards. EPA's *proposed* post-closure rule (59 FR 55778, Nov. 8, 1994) states, "the Agency is proposing to remove the current requirement for a post-closure permit and allow the Agency to use alternative authorities to address facilities with units requiring post-closure care." If EPA's final post-closure rule removes the current requirement for a Post-Closure Permit and allows the use of alternative authorities, Ecology is likely to propose changing its rules in the same manner. Assuming the state rule is amended to allow use of alternative authorities, Ecology would use a MTCA order or decree to ensure completion of post-closure care at Terminal 91.

If you have any question or comments regarding this matter, please contact Sally Safioles at the Department of Ecology, (425) 649-7026.

Sincerely,



Julie Sellick, Supervisor
Hazardous Waste and Toxics Reduction Section

JS:SS:gm

Enclosure

cc: Galen Tritt, WDOE-NWRO
Sally Safioles, WDOE-NWRO
Gerald Lenssen, WDOE-HQ
Tanya Barnett, Office of the Attorney General
Susan Roth, Roth Consulting

George Markwood, Pacific Northern Oil Co.
Mark Warner, Philip Services Corp.
Diane Richardson, EPA Region 10
Jack Boller, EPA Region 10
Anna Filutowski, EPA Region 10
HZW file 6.6.2.1

Part VI - CORRECTIVE ACTION

VI.A. USE OF THE MODEL TOXICS CONTROL ACT TO COMPEL RCRA CORRECTIVE ACTION

On November 4, 1994, the Washington State Department of Ecology ("the Department") received final authorization from the U.S. Environmental Protection Agency, Region 10 ("the Agency") to implement the state corrective action program in lieu of the federal corrective action program. The Agency has subsequently designated the Department to take the lead for corrective action at the Terminal 91 Facility, located at 2001 West Garfield Street, Seattle, Washington. The existing RCRA Dangerous Waste Storage Permit ("Permit") issued by the Department for this facility was issued to Burlington Environmental Inc. dba Philip Service Corporation ("Philip") as the operator and to the Port of Seattle ("Port") as the land owner.

The state corrective action rules and regulations authorized by the Agency include Chapter 70.105 RCW (Hazardous Waste Management); Chapter 173-303 WAC (Dangerous Waste Regulations); Chapter 70.105D RCW (Model Toxics Control Act); and Chapter 173-340 WAC (The Model Toxics Control Act Cleanup Regulation). These rules and regulations meet the requirements of Section 3004(u) of RCRA (Section 206 of HSWA), 42 USC Section 6924(u), and regulations codified at 40 CFR 264.101.

The Department is requiring that the permittees of the facility fulfill their corrective action responsibilities using an enforceable action issued pursuant to the Model Toxics Control Act (MTCA), as amended, (RCW 70.105D; Hazardous Waste Cleanup-Model Toxics Control Act) and its implementing regulations (WAC 173-340; The Model Toxics Control Act Cleanup Regulation).

Corrective action requirements imposed by the Department in an action issued pursuant to the Model Toxics Control Act will be in compliance with the requirements of WAC 173-303-646 (2); Corrective Action, and the requirements of chapter WAC 173-303; Dangerous Waste Regulations, to the extent required by RCW 70.105D.030(2)(d); Department's Powers and Duties, and WAC 173-340-710; Applicable State and Federal Laws.

Upon adoption of the revised permit conditions, VI.A. and VI.B., the Agency shall rescind the RCRA Section 3008(h) Order [EPA Docket No. 1098-11-06-3008(h)] effective May 12, 1990; provided in former condition VI.A.1. of the Permit.

VI.B. CORRECTIVE ACTION CONDITIONS:

VI.B.1. State Corrective Action Order number DE 98HW-N108, effective April 10, 1998, and its attachments (including any submittals approved, or any amendments or changes to any plans, reports, or schedules) are incorporated by reference and shall be taken and considered as a part of this permit the same as if they were fully set out therein. Order number DE 98HW-N108 addresses the State Remedial Investigation and Feasibility Study (RI/FS) and the Draft Corrective Action Plan (CAP) requirement(s) of corrective action using RCW 70.105D; Hazardous Waste Cleanup-Model Toxics Control Act. Corrective action requirements are included in the order in a Schedule of Compliance as required by WAC 173-303-646 (2)(c); Corrective Action. The order is included as an attachment to this permit modification.

VI.B.2. The "Facility", for the purposes of RCRA corrective action, covers approximately 124 acres of the upland area at the Port of Seattle's Terminal 91. The state corrective action order is for the tank farm lease parcel and areas where releases of dangerous constituents originating from the tank farm lease parcel have come to be located. The tank farm lease parcel is approximately 4 acres. The remaining upland acreage will be investigated and remediated under the state's independent remedial action process as provided for in WAC 173-340-510. If this independent remedial action fails to provide the necessary protection of human health and the environment, the Department reserves the right to issue a state corrective action order that would cover the remainder of the upland area at Terminal 91.